

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

FREDERICK BANKS
and ROBERT WALL

PETITIONERS

VERSUS

CIVIL ACTION NO. 5:08cv313-DCB-MTP

BRUCE PEARSON, et al.

RESPONDENTS

ORDER

BEFORE THE COURT is petitioners' joint request for habeas relief filed pursuant to 28 U.S.C. § 2241. Having reviewed the record, this Court finds that based on the payment of \$10.00 for the filing fee the petitioners intended to file separate habeas petitions even though one petition was submitted.¹

However, even if the petitioners did not intend to file separate habeas petitions, this Court finds that there has been a misjoinder of petitioners in the instant habeas civil action. See Fed. R. Civ. P. 21. When there is a permissive joinder of parties, as in the case at bar, Rule 20(a) of the FEDERAL RULES OF CIVIL PROCEDURE applies and provides as follows:

(1) Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiff will arise in the action.

This Court finds that even though the petitioners are both housed at F.C.I. Yazoo City and claim that they are both "native American Indians" the similarities stop there. See Pet. 4. The petitioners were convicted in separate federal district courts for different federal crimes.² In the

¹The filing fee for a petition for habeas relief is \$5.00.

²According to petition, Petitioner Banks was convicted in the United States District Court for the Western District of Pennsylvania of violating of 18 U.S.C. §§ 1341, 2319; 1957; 513(a);

instant habeas action, they are challenging the execution of their sentences. Therefore, this Court finds that petitioners claims did not arise out of the same transaction or occurrence, nor can it be said that there is a common question of law or fact under these circumstances relating to the executions of their sentences.

Finally, because there is no prejudice to either party by addressing this habeas request in separate civil actions, this Court finds that it shall be severed into two separate habeas civil actions, one for each petitioner. Accordingly, it is

ORDERED:

1. That Robert Wall is dismissed without prejudice as a petitioner in this civil action.
2. That the Clerk is directed to make a copy of the petition and other documents in the instant civil action and file same as a new civil action for Robert Wall v. Bruce Pearson, Warden and Attorney General for the Untied States of America assigning it a new civil action number. Petitioner Frederick Banks will not be added as a petitioner in the new civil action. The file date for this new civil action captioned Robert Wall v. Bruce Pearson, Warden and Attorney General for the United States of America will be November 10, 2008, the date when the original petition was filed.
3. That the Clerk is directed to notify Robert Wall by mailing a notice of assignment advising him of the civil action number as well as the judge assignment for his new civil action, Robert Wall v. Bruce Pearson, Warden and Attorney General for the United States of America.
4. That the \$5.00 overpayment in the instant civil action will be paid as the filing fee in the new civil action for Robert Wall v. Bruce Pearson, Warden, and Attorney General for the

1512(b)(2)(A) and 17 U.S.C. § 506(a)(1). Petitioner Wall was convicted in the United States District Court of the Northern District of New York of violating 18 U.S.C. § 2252A(a)(5)(B).

United States of America.

5. That a copy of this order be forwarded to the Financial Office of this Court so that the overpayment of \$5.00 in the instant civil action can be applied to the new civil action for Robert Wall. The Clerk is directed to also provide the Financial Office of this Court with the new civil action number assigned to the petition for habeas relief filed by Robert Wall.

This the 1st day of December, 2008.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE